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ABD INSURANCE & FINANCIAL SERVICES,
INC., KURT DE GROSZ and
BRIAN HETHERINGTON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WELLS FARGO & COMPANY and WELLS)
FARGO INSURANCE SERVICES, USA, INC.,)

Plaintiffs,)

v.)

ABD INSURANCE & FINANCIAL)
SERVICES, INC.; KURT DE GROSZ; and)
BRIAN HETHERINGTON,)

Defendants.)

No. CV 12-3856 (PJH)

**JOINT STATEMENT RE STATUS
AND REQUEST TO TAKE HEARING
OFF CALENDAR
AND ORDER**

The Hon. Phyllis J. Hamilton

Complaint Filed: July 24, 2012

1 Counsel for the parties hereby submit this joint statement re status and request that the
2 Court take the May 21, 2014 hearing on Wells Fargo's renewed motion for preliminary injunction
3 off calendar.

4 The Court will recall that on December 20, 2013, the Ninth Circuit issued a memorandum
5 disposition, reversing this Court's Order denying Wells Fargo's motion for preliminary injunction,
6 and remanding back to this Court for further consideration. The ABD Team filed a petition for
7 panel rehearing and rehearing *en banc*, which was denied on February 6, 2014, although the panel
8 modified its memorandum disposition to respond to one of the issues raised by the ABD Team's
9 petition for review. The revised memorandum disposition contained an order barring any further
10 petitions for panel rehearing or rehearing *en banc*.

11 On March 3, 2014, the Ninth Circuit issued a published Opinion, setting forth the same
12 reasoning and holding as previously included in the memorandum disposition, and repeating the
13 prohibition against further petitions for rehearing.

14 At the Case Management Conference before this Court on March 6, 2014, the Court and
15 the parties set a hearing for May 21, 2014, on a renewed motion for preliminary injunction to be
16 filed by Wells Fargo. The Court directed the parties to contact the Ninth Circuit to determine if
17 the mandate had issued back to the district court, and requested the parties to agree on a briefing
18 schedule for the renewed motion.

19 The next week, on March 11, 2014, the Ninth Circuit withdrew its March 3 published
20 Opinion, and issued an identical published Opinion. It also issued a new Order specifically
21 deleting the prohibition against further petitions for rehearing.

22 In accordance with the March 11 Order and in light of the publication of the Opinion and
23 its precedential impact, the ABD Team filed a renewed Petition for Rehearing *En Banc* on March
24 24, 2014.

25 Accordingly, this preliminary injunction issue is again before the Ninth Circuit, as it
26 considers the renewed Petition for Rehearing *En Banc*. Therefore, the parties respectfully request
27 that the Court take the May 21 hearing on the renewed motion for preliminary injunction off
28 calendar. The parties and counsel will contact the Court and, as appropriate depending on the

1 Ninth Circuit's ultimate order, will work together to bring this matter efficiently back to this Court
2 after the final issuance of the mandate.

3
4 Dated: March 27, 2014

/s/ Felicia J. Boyd

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15
16 Dated: March 27, 2014

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3/28/14

ATTESTATION OF E-FILER

In compliance with Local Rule 5-1(i), the undersigned ECF user filing this document,
hereby attests that all signatories of this document have concurred in the filing of this document.

/s/ Benjamin K. Riley

Benjamin K. Riley